

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:18-cv-314-FDW**

**DUANE L. FOX, *also known as*
JENNIFER ANN JASMAINE,**

Plaintiff,

vs.

**NORTH CAROLINA PRISONER
LEGAL SERVICES,**

Defendant.

ORDER

THIS MATTER is before the Court on remand from the Fourth Circuit Court of Appeals. (Doc. No. 15). On July 18, 2018, the Court entered an order waiving the initial filing fee and directing monthly payments to be made from Plaintiff's prison account. (Doc. No. 13). Thus, Plaintiff is proceeding in forma pauperis.

I. BACKGROUND

Pro se Plaintiff Duane Fox, also known as Jennifer Ann Jasmaine, a North Carolina inmate currently incarcerated at Lanesboro Correctional Institution in Polkton, North Carolina, filed this action on June 18, 2018, naming North Carolina Prisoner Legal Services ("NCPLS") as the sole Defendant. Citing the First, Fifth, and Fourteenth Amendments, Plaintiff alleges that her due process right and her right to access to the courts have been violated because she has no access to a law library and NCDPS failed to conduct legal research on Plaintiff's behalf. (Doc. No. 1 at 9). On December 4, 2018, the Fourth Circuit remanded the action to this Court, finding that this Court did not "adequately justify" its dismissal of Plaintiff's Complaint.

II. STANDARD OF REVIEW

Because Plaintiff is proceeding in forma pauperis, the Court must review the Complaint to determine whether it is subject to dismissal on the grounds that it is “frivolous or malicious [or] fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2). Furthermore, § 1915A requires an initial review of a “complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” and the court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint is frivolous, malicious, or fails to state a claim upon which relief may be granted; or seeks monetary relief from a defendant who is immune from such relief. In its frivolity review, this Court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989).

III. DISCUSSION

Given the Fourth Circuit’s remand, this Court will allow this matter to proceed past initial review and the Court will order the U.S. Marshal to serve Defendant so that Defendant may respond to the allegations in Plaintiff’s Complaint.

IV. CONCLUSION


The court finds that this action survives initial review.

IT IS, THEREFORE, ORDERED that:

1. Plaintiff’s Complaint survives initial review under 28 U.S.C. § 1915(e).
2. The Clerk shall send Plaintiff a summons form to fill out so that service may be made on Defendant. Once the Court receives the summons form, the U.S. Marshal shall effectuate service on Defendant in accordance with Rule 4 of the Federal

Rules of Civil Procedure.

Signed: January 15, 2019



Frank D. Whitney
Chief United States District Judge

